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WASHINGTON STATE COURT OF APPEALS  
DIVISION TWO

Bruce Moret

Petitioner/Appellant,

V.

Breca Gale, Sherry Bennett, YWCA  
Clark County

Respondents/Defendants

NO. 477688

PETITION FOR REVIEW of  
CLARK COUNTY NO 14-2-00271-1

BRIEF OF APPELLANT

Respectfully submitted,



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December 24, 2015

COVER OF APPEAL TO COURT OF APPEALS

RE: CASE #: 47768-8-II

CASE 14-2-00271-1

December 24, 2015

## TABLE OF CONTENTS

- I. INTRODUCTION: (p7)
- II. ASSIGNMENTS OF ERROR (p7)
  - No. 1 In granting YWCAs' Motion for Summary Judgement (p7)
  - No. 2 Not considering the joinder of the related case (p7)
  - No. 3 Defendants are claiming both (p7)
- II.b Issues Pertaining to Assignments of Error (p8)
  - No. 1 Should the court rely solely on direct evidence? (p8)
  - No. 2 Should the court ignore a Joinder Motion? (p8)
  - No. 3 Should the court allow an employer... (p8)
- III.-----STATEMENT OF THE CASE (p8)
- IV.---- SUMMARY OF ARGUMENT (p12)
- V.-----ARGUMENT (p13)
  - 1) The Defendants base their action on Moret's "lack of candor"  
(p13)
    - a) Moret did not know the specific situations (p13)
    - b) Moret realized the comment had been taken out of  
context. (p14)
  - 2) Ms. Bennett states that Moret's termination is (p14)

- a) This confusion, if it is not intentional, (p14)
- b) It is uncommon to not divulge details (p14)
- 3) It is uncommon to suspend an individual based on (p14)
  - a) The organization was ethically bound (p15)
- 4) Whether by corroborating Ms. Kuzmic's statements (p15)
- 5) The Defendants failed to abide by the organization's rules (p15)
- 6) The Defendants exhibit a "lack of candor" (p15)
- 7) The Canfield Investigative report was requested (p16)
- 8) The denials of "redecorating" Moret's office and (p16)
- 9) Kuzmic states that Moret asked a question (p16)
- 10) Only the March 2013 business travel voucher (p16)
- 11) Kuzmic presumably made the accusation (p16)
- 12) It is organization policy to immediately report (p16)
- 13) March 27, 2013 is the same day that Kuzmic (p17)
- 14) If Kuzmic believed herself to be tormented (p17)
- 15) Kuzmic entered Moret's office on March 27 (p17)
  - a) March 27 is the same day she filed (p17)
  - b) Ms. Kuzmic doesn't mention the interaction (p17)
  - c) The organization has an obligation to question (p17)

- 16) Moret believes that the entire allegation (p17)
- 17) Defendants were unwilling to sign a (p18)
  - a) The “policy” provided as justification states (p18)
  - b) Moret’s meeting with Megan Vaughn (p18)
  - c) Moret believes that stating it was “not policy” (p18)
- 18) In Defendants’ MSJ, Bennett attempts to mislead (p18)
  - a) Moret had been asked out by a co-worker (p19)
  - b) Prior to going out with the co-worker (p19)
  - c) Bennett did not object at that time, stating (p19)
  - d) Bennett implemented the new workplace (p19)
  - e) Moret played racquetball on a regular (p19)
    - 1) Bennett replied that, no, she wanted (p19)
- 19) Bennett misleads the court again stating (p18)
  - a) Prudence dictates that the accused is (p20)
  - b) Moret did learn Kuzmic’s identity during (p20)
    - 1) The discrepancies in the historical (p20)
    - 2) The organization went to great lengths (p20)
  - c) Kuzmic’s allegations span a two month (p20)
    - 1) Despite Kuzmic’s response that she (p21)

20) Defendants mislead the court by repeatedly claiming (p21)

a) Moret unequivocally states...he never *asked* (p21)

b) Moret unequivocally states...he and Kuzmic (p21)

c) Moret unequivocally states...his comment (p21)

21) Moret is the one terminated “at will” or (p22)

VI.-----CONCLUSION (p22)

1) remanded for trial, and (p22)

2) joined with case 15-2-0832-7, Moret v Kuzmic (p22)

3) And that subpoena be issued (p22)

4) Moret is requesting an award in the maximum (p22)

## TABLE OF AUTHORITIES

### Table of Cases

Gyula Fekete, Appellant, v. U. S. Steel Corporation, 408 F.2d 291; *Iib (1)*, p 7

*"Only by permitting plaintiff to bring suit can this Court preserve the statutory scheme whereby the right to equal employment opportunity is to be secured by individuals."*

MacDonald v. Korum Ford, 912 P.2d 1056 (1996); *V. (B)2*, p14

*At the time of the claim, "...it was reasonable to believe that [she] may have a meritorious claim," but that after her deposition, Cain knew or should have known that the facts, the existing law, or a good faith extension of the existing law could not justify further prosecution of her claims.*

McDonnell Douglas Corp. v. Green, 411 U.S. 805, (1973), *Iib (1)*, p7

*"...must be given a full and fair opportunity to demonstrate by competent evidence that the presumptively valid reasons for his rejection were, in fact, a coverup for a racially discriminatory decision."*

McDonnell Douglas Corp. v. Green, 411 U.S. 799, (1973), *Iib (3)*, p7

*"...court actions under Title VII are de novo proceedings, and...a Commission 'no reasonable cause' finding does not bar a lawsuit in the case."*

Price Waterhouse v. Hopkins :: 490 U.S. 230 (1989); *V. (B)1*, p14

*"it unlawful for an employer to undertake an adverse employment action "because of" prohibited factors and the statute's legislative history demonstrate that a substantive violation only occurs when consideration of an illegitimate criterion is the "but-for" cause of the adverse action."*

Robinson v. Lorillard Corporation, 319 F.Supp. 835 (1970), Discussion, 42 U.S.C Sec 2000e-2(a)(2); *V. (E)3*, p17

*It is an unlawful practice "to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin"*

Texas Dept. of Commun. Affairs v. Burdine, 450 U.S. 248 (1981), 411 U.S. 802; *Iib (1)*, p7

*“...should the defendant carry this burden, the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination.”*

Watson v. Fort Worth Bank & Trust :: 487 U.S. 978(c) (1988); *V. (B)*, p14

*“Since neither the District Court nor the Court of Appeals has evaluated the statistical evidence to determine whether petitioner made out a prima facie case of discrimination under disparate impact theory, the case must be remanded”*



## BRIEF OF APPELLANT

### I. INTRODUCTION:

Bruce Moret to date has been deprived of opportunity to refute the basis of the claims for which he was wrongfully terminated and denied the opportunity to show the disparate treatment, discrimination employed by Breea Gale, Sherri Bennett & YWCA Clark County (YWCA et al) in this case.

### II. ASSIGNMENTS OF ERROR

No. 1 The court erred in granting YWCAs' Motion for Summary Judgement (MSJ) on May 29, 2015. *CP37*

No. 2 The court erred in not considering the joinder of the related case v Barbara Kuzmic, No. 15-2-00832-7, for Defamation and Slander, which precipitated this case. *CP33*

No. 3 Defendants are claiming both an At-Will termination *CP27, Exh7, Para1* and termination for cause *CP27, Exh7, Para5*.

## II.b Issues Pertaining to Assignments of Error

No. 1 Should the court rely solely on direct evidence, or lack thereof, to grant a MSJ, when there has been no adversary proceeding in a court of law, or opportunity to produce depositions that prove the reason given for termination was pretext or discriminatory in its application? *McDonnell Douglas Corp v Green*, page 411 US 805; *Gyula Fekete, Appellant, v. U. S. Steel Corporation*, 408 F.2d 291; *Texas Dept. of Commun. Affairs v. Burdine*, 450 U.S. 248 (1981), 411 U.S. 802;

No. 2 Should the court ignore a Joinder Motion, because it considered and granted the MSJ first, when both cases involve the same individuals, potential witnesses, judge and attorneys? *CR 20(a)*

No. 3 Should the court allow an employer the protection of At-Will and simultaneously deny the employee the opportunity to refute the causation claims noted as reason for termination? *McDonnell Douglas Corp v Green*, page 411 US 799

## III. STATEMENT OF THE CASE

- 1) Kuzmic accused Moret of Sexual Harassment. *CP27, Exh2*. 2)
- 2) YWCA et al suspended Moret pending investigation.

- 3) The investigator noted the claims could not be substantiated. *CP27, Exh7, Para5* 4)
- 4) YWCA et al terminated Moret “at will” *CP27, Exh7, Para1*, and because he allegedly asked Ms. Kuzmic to keep their interaction a secret. *CP27, Exh7, Para5*.
- 5) Moret requested a review by EEOC and a meeting with the Board of Directors, both were declined.
- 6) Moret filed suit against YWCA et al for gender discrimination and wrongful termination.
- 7) Moret had not been provided with any explanation nor documentation of the claims by Kuzmic until receiving her written statement to Sherri Bennett, Director of YWCA *CP27, Exh2* and transcripts of the tape recorded interview by investigator Dean Mitchell *CP27, Exh3*, during the discovery process.
  - a. Even though the documents were generated just over a week apart, April 1 and April 10, respectively, and Kuzmic had the benefit of using notes *CP27, Exh3, p15*, and the presence of Gale, HR Director, *Id* during the interview, Moret’s review of the statements identified numerous falsehoods and

inconsistencies, many of which could be refuted through depositions and witness testimony and which, at the very least, should have piqued the investigator's curiosity and required more thorough investigation.

- b. Other staff members were mentioned in both Moret's and Kuzmic's interview with the investigator, yet none were interviewed for corroboration.

8) Moret filed suit against Kuzmic for Defamation of Character and Slander, April 13, 2015, No. 15-2-00832-7.

- a. Kuzmic had moved from Washington, to California, to Colorado, to Montana since April 2013, making service of process difficult.

9) Along with the MSJ, Moret received transcripts of Kuzmic's interview with the investigator, almost twelve months after receiving the written statement to Bennett

- a. The two statements were prepared originally generated just over a week apart from each other

10) YWCA et al denied each and every one of Moret's Request for Admissions.

- a. Moret intends to show through third party testimony (current and/or former YWCA staff and Board Members) that those requests should have been admitted.
- b. Depositions held Thursday, November 19, 2015, regarding case No. 15-2-00832-7, confirm that Ms. Bennett lied about her participation in activities noted in the RFA for this case, but this can only be brought to light if the case is remanded.

11) The termination of Moret appeared to be too punitive for an “at will” termination.

- a. Moret was initially listed as “not rehire-able” until intervention by President of the Board of Directors. *CP27, Exh7, Para6*
- b. YWCA et al declined to sign a “letter of introduction” for Moret, stating it was against organization policy.
  - i. For supporting documentation, they provided a policy excerpt noting that employee information will not be given out unless requested by employee.
- c. Reference calls to YWCA by prospective employers of Moret went unanswered on one or more occasions.

12) The termination of Moret for the reason “lack of candor” regarding Moret’s relationship with Kuzmic is unjustifiable.

- a. In the interviews taken by the investigator, neither Moret nor Kuzmic stated there was a relationship between them. *CP27, Exh3 & Exh4*
- b. Other staff members mentioned in the interview statements were not contacted for corroboration or contradiction of allegations made.

#### IV. SUMMARY OF ARGUMENT

- 1) Moret’s termination, stated as being due to being “in opposition to our core values”, *CP27, Exh7, Para5* is based primarily on one phrase, taken out of context, whereas the Defendants have displayed a substantive “lack of candor” in their
  - a. denials of Requests for Admissions,
  - b. reluctance to provide timely or complete requested discovery documents and interrogatories,
  - c. not informing Moret of the specific allegations made by Kuzmic time of discovery,

- d. not allowing Moret the opportunity to discuss this process with the Board of Directors, and
  - e. unwillingness to provide references or a letter of introduction to prospective employers for Moret.
- 2) Except for minor points of agreement on stated comments, Moret disputes Kuzmic's statements in total, and denies any sexual harassment.

## V. ARGUMENT

1) The Defendants base Moret's termination on his "lack of candor" on Moret's response of "It would be easier if you didn't", in response to Kuzmic's question to Plaintiff whether she should tell Natalie Wood, her supervisor, about their conversation regarding Moret's suggestions to improve her department's morale. ***CP27, Exh4, p10***

- a) At the time of the interview, Moret did not know the specific situations and incidents that Barbara had fabricated, but his response does not equate to "asking" Ms. Kuzmic to keep a relationship a secret, as the Defendants repeatedly claim. ***CP27, Dec of Sherri Bennett, Para 14***

b) After seeing the transcript, Moret realized the comment had been taken out of context, and Defendants have now morphed the response to the question: “Should I tell Natalie about our conversation?” – response: “It would be easier if you didn’t.”...into a request: “You can’t tell anyone about our relationship”.

2) Ms. Bennett states that Moret’s termination is entirely based on that request *CP27, Dec of Sherri Bennett, Para 20*, thereby taking a false premise as fact, and avoiding the organization’s due diligence of investigating a false sexual harassment claim.

a) This confusion, if it is not intentional, could have been avoided had Breea Gale (Human Resources), Sherri Bennett (Executive Director) and Dean Mitchell (Investigator) been forthcoming about the allegations, or if they allowed a discussion as stated in the Employee Handbook under “conflict and problem resolution”.

b) It is uncommon to not divulge details of allegations to the accused, since it is hard to defend or explain oneself against the unknown.

3) It is uncommon to suspend an individual based on accusations, determine those accusations are unsubstantiated, terminate the individual



for a different reason or reasons (At-Will, Violation of Workplace Relationships Policy, Lack of Candor), and then protect the accuser by not divulging the accusations. *Watson v. Fort Worth Bank & Trust*; 487 U.S.

978(c) (1988)

a) The organization was ethically bound to determine the veracity of Kuzmic's statements and they failed to do so. *Price Waterhouse v. Hopkins*; 490 U.S. 230 (1989)

4) Whether by corroborating Ms. Kuzmic's statements through staff and co-workers mentioned in both statements, or by providing Moret an opportunity to see the accusations, the veracity of the statements could have been determined. *MacDonald v. Korum Ford*, 912 P.2d 1056 (1996)

5) The Defendants failed to abide by the organization's rules as supported in the Employee Handbook "code of ethics" section stating "We treat each other in an open and helpful manner".

6) The Defendants exhibit a "lack of candor" in their denials of and inaccurate responses to Requests for Admissions, Production of Documents and Interrogatories.

- 7) The Canfield Investigative report was requested June 9, 2014 but the Kuzmic interview was not sent to Plaintiff until April 24, 2015, over ten months later.
- 8) The denials of “redecorating” Moret’s office and “Bagel Fridays” can be and have been proven otherwise by staff, in depositions held November 19, 2015..
- 9) Kuzmic states that Moret asked a question during the candidate interview and Defendants are not willing to provide those documents, which prove only that Moret asked a preset question to each candidate, and variation of questions was not allowed by Gale.
- 10) Only the March 2013 business travel voucher and check to Kuzmic was provided, omitting the January 2013 business trip referenced in Kuzmic’s statement.
- 11) Kuzmic presumably made the accusation against Moret first to her supervisor, Natalie Wood, on March 25, 2013, *CP27, Exh5, p2* and then to Breea Gale in Human Resources on March 27, 2013, *Id*, but according to Defendants’ Answers to RFP, there were no documents available.
- 12) It is organization policy to immediately report claims of harassment or abuse and Natalie Wood would have been derelict in her duties to not

report the accusations, as each employee is a mandatory reporter of abuse and neglect, but Plaintiff believes Defendants lied about the meeting even taking place, or the harassment being reported at that time.

13) March 27, 2013 is the same day that Kuzmic requested Moret's approval on her second business trip in two months both trips exceeding the budgeted allowance of \$200 per person.

14) If Kuzmic believed herself to be tormented by Moret, Wood or Gale could have, and were obligated to advise her to avoid interaction with Moret and had someone else give approval on her business trip.

15) Kuzmic entered Moret's office on March 27, requesting his approval on a business trip.

a) March 27 is the same day she filed the sexual harassment claim with Ms. Gale.

b) Ms. Kuzmic doesn't mention the interaction in her statement to Sherri Bennett nor her interview with Dean Mitchell.

c) The organization has an obligation to question this lack of reporting.

16) Moret believes that the entire allegation is based on the fact that he questioned the excessive amount of the travel expenditure and that by

filing the harassment claim, Ms. Kuzmic would ensure her ability to take the trip.

17) Defendants were unwilling to sign a “letter of introduction” for Moret’s potential employment elsewhere, stating it was “policy”.

a) The “policy” provided as justification states that “No additional information will be released without written permission of the employee...”.

b) Moret’s meeting with Megan Vaughn, Board President, and the pre-drafted Letter of Introduction by Moret would constitute that permission.

c) Moret believes that stating it was “not policy” to sign was pretext, and the Board members wouldn’t sign because of Kuzmic’s allegations, details of which Moret was not informed.

***Robinson v. Lorillard Corporation, 319 F.Supp. 835 (1970), 42 U.S.C Sec 2000e-2(a)(2)***

18) In Defendants’ MSJ, Bennett attempts to mislead the court into thinking Moret had violated the workplace relationship policy. ***CP28, p2, Para2 & 3.***

- a) Moret had been asked out by a co-worker in January of 2012.
- b) Prior to going out with the co-worker (not a subordinate), Moret reviewed the Handbook to see what the policy was and, finding no policy, asked Bennett what her thoughts were on the issue.
- c) Bennett did not object at that time, stating she would research further.
- d) Bennett implemented the new workplace relationship policy in the summer of 2012, and Moret stopped dating the employee when told of the new policy.
- e) Moret played racquetball on a regular basis with another employee, Laurie Schact, Director of the Sexual Assault Program, and Moret asked Bennett if that should stop as well.
  - 1) Bennett replied that, no, she wanted her management team to be “supportive of each other and show camaraderie”.

19) Bennett misleads the court again stating “In accordance with YWCA policy on reporting and investigation, the identity of the complainant was not shared with Moret”, when the policy states “information will only be disclosed to those with an authorized need to know”. *CP28, p4, footnote*

a) Prudence dictates that the accused is on an authorized need to know.

b) Moret did learn Kuzmic's identity during the course of the investigation, but did not learn specifically or generally of the allegations until receiving Kuzmic's statement to Bennett six months later during the discovery process, and transcripts of the interview with Dean Mitchell two years after the allegations, in an exhibit attached to a filing. *CP27, Dec of Sherri Bennett, Exh3*

1) The discrepancies in the historical timelines and inconsistencies in Kuzmic's two statements, and the fact that the organization and the investigator did not question them or try to reconcile the two is Plaintiff's primary justification for the discrimination claim.

2) The organization went to great lengths to shield Kuzmic from scrutiny, and twisted one response by Plaintiff into "cause celebre", actionable by termination.

c) Kuzmic's allegations span a two month period, starting on day one, or the first week, or other times, depending on the statement

being read, with Moret asking her to go out, but stating it would have to be in secret.

1) Despite Kuzmic's response that she doesn't keep secrets, she managed to keep these allegations a secret for two months, even while meeting weekly with her supervisor and having regular lunch dates with the Human Resources Director.

20) Defendants mislead the court by repeatedly claiming that Moret admitted to requesting that Kuzmic keep details of their relationship secret, or hidden from her supervisor. *CP28, p4 & 5*

- a) Moret unequivocally states...he never *asked* Kuzmic to keep *any* secrets.
- b) Moret unequivocally states...he and Kuzmic never had any physical or emotional relationship.
- c) Moret unequivocally states...his comment "it would be easier if you didn't" was a response to Kuzmic's question whether to tell her supervisor about the suggestions he made to improve her working relationship with her staff.

21) Moret is the one terminated “at will” or for an “inappropriate relationship” or for “lack of candor, yet Defendants have displayed an amazing lack of candor throughout the investigation and this court process.

## VI. CONCLUSION

Moret requests that this case be:

- 1) remanded for trial, and
- 2) joined with case 15-2-0832-7, Moret v Kuzmic, recently dismissed, but going to appeal or for refiling, where both Moret’s and Kuzmic’s actions can be reviewed / corroborated by witness testimony and the veracity of Kuzmic’s allegations, upon which the Defendants’ actions are based, can be determined, and the Defendants’ actions can be reviewed.
- 3) And that subpoenas be issued for Depositions of Sherri Bennett, Natalie Wood, Breea Gale, Laurie Schacht.
- 4) Moret is requesting an award in the maximum amount allowed by law.



DATED: December 24, 2015

Respectfully submitted,

A handwritten signature in cursive script, reading "Bruce Moret". The signature is written in black ink and is positioned above a horizontal line.

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CERTIFICATE OF SERVICE

I, Bruce Moret, PRO SE, do hereby certify that I have this date shipped via  
FEDEX a true and correct copy of the APPELLANT BRIEF  
including,

- 1) \_\_\_\_\_
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_

to the attorneys of the current defendants of this action:

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